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# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

December 13, 1949

Honorable L. D. Ransom  
Executive Secretary  
Texas Real Estate Commission  
Austin, Texas

Opinion No. V-964

Re: The authority of the Texas  
Real Estate Commission  
to require that applicants  
for licenses pass an exam-  
ination to determine their  
competence.

Dear Sir:

Your request for an opinion states in part:

"The Texas Real Estate Commission has been presented with the question of whether or not it is authorized or permitted under the Real Estate Dealers License Act - Article 6573a, revised civil statutes, as amended by Senate Bill No. 28, 51st Legislature - to require that each and every applicant for a license as a real estate dealer or salesman pass an examination in order to determine the competency of such applicant.

"Opinion No. 0-6252 of your department, October 10, 1944, discusses this question and concluded that under the statute as written at that time no authority to require an applicant to take either an oral or written examination exists. The question had arisen under Sections 8 and 9 of the Act,

"Section 8 required that: 'Application for a real estate dealer's or real estate salesman's license shall contain such other information as to the applicant, in addition to the above described as the Administrator of the Securities Division of the office of the Secretary of State shall require. The Administrator of the Securities Division of the office of the Secretary of State may require such other proof through the application

or otherwise as its officers shall deem desirable with due regard to the paramount interest of the public as to the honesty, truthfulness, integrity, and competency of the applicant.'

"Section 9 provided that: 'If the Administrator of the Securities Division of the office of the Secretary of State is satisfied that the applicant for real estate dealer's or real estate salesman's license is of good business repute and that the business will be conducted in an honest, fair, just, and equitable manner, and upon complying with all other provisions of law and conditions of this Act, a license shall thereupon be granted by the Administrator of the Securities Division of the office of the Secretary of State to the successful applicant therefor as a real estate dealer or real estate salesman, and the applicant, upon receiving possession of license, is authorized to conduct the business of a real estate dealer or real estate salesman in this State.' "

The exact question presented is whether the Texas Real Estate Commission is authorized or permitted to require an applicant for license to pass an examination in order to determine his competency.

We are of the opinion that the Texas Real Estate Commission is not authorized or permitted under Article 6573a, V.C. S., as amended by Acts 51st Leg., R.S. 1949, Ch. 149, p. 304, to require that an applicant for a license as a real estate dealer or salesman pass an examination in order to determine the competency of such applicant.

Opinion 0-6252, with which you are familiar, states in part that

"If the Legislature had intended that applicants for a dealer's or salesman's license under 'The Real Estate Dealers License Act' were required to take an oral or written examination before receiving a license, the Legislature could have said so in plain language; this it has not done, with reference to applicants for a dealer's or a salesman's license under said Act."

The 1949 amendment, like the prior act, does not provide for the examination of applicants. Sections 8 and 9(a) have been re-enacted in the identical words used in the prior statute and which was in force at the time the above opinion was written, except that the name of the administrator has been changed.

Our conclusion that no authority to give examinations to applicants exists is based on the rule of statutory construction stated in 2 Sutherland Statutory Construction (3rd Edition) 523, 525. It is there stated that

"Where a statute has received a contemporaneous and practical interpretation and the statute as interpreted is re-enacted, the practical interpretation is awarded greater weight than it ordinarily receives, and is regarded as presumptively the correct interpretation of the law. The rule here is based upon the theory that the legislature is acquainted with the contemporaneous interpretation of a statute, especially when made by an administrative body or executive officers charged with the duty of administering or enforcing the law, and therefore impliedly adopts the interpretation upon re-enactment . . . . Likewise, legislative action by amendment or appropriations with respect to a law which has received a contemporaneous and practical construction may indicate approval of interpretations given the unchanged parts of the law."

#### SUMMARY

The Texas Real Estate Commission has no authority under existing statutes to require applicants for licenses to pass an examination to determine their competence. Art. 6573a, V.C.S.

Yours very truly,

APPROVED

*Jack R. Greenhill*

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By Walter F. Woodul, Jr.,  
Assistant

WFW:v